



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Emprise Corporation--Request for Reconsideration

File: B-225385.2

Date: July 23, 1987

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### DIGEST

Agency determination to reject proposal as technically unacceptable is unobjectionable where the proposal takes exception to several solicitation requirements and the agency reasonably concludes that the offeror's technical approach would require extensive changes to the agency's testing procedures.

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### DECISION

Emprise Corporation requests reconsideration of our decision Emprise Corporation, B-225385, Feb. 26, 1987, 87-1 CPD ¶ 223, in which we denied in part and dismissed in part Emprise's protest of the rejection of its proposal as technically unacceptable in connection with request for proposals (RFP) No. DAAA21-86-R-0034, issued by the U.S. Army's Armament, Munitions and Chemical Command, Dover, New Jersey. We affirm our prior decision.

The RFP was for an automatic test stand module assembly for use in testing the AGT-1500 gas turbine engine in the M-1 tank. The solicitation provided for award of a firm, fixed-price contract to the lowest priced offeror having a technically acceptable proposal. The proposal from Emprise received 45 out of a possible 100 evaluation points (the three proposals considered in the competitive range received scores of 92, 87, and 85 points) and the agency determined that the proposal was technically unacceptable. Essentially, the agency viewed a number of technical approaches contained in the proposal as deviating from solicitation requirements and concluded that the proposal did not adequately explain the approaches proposed. We concluded that the Army's determination to reject the proposal was reasonable.

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In requesting reconsideration, Emprise lists a number of issues that it contends were either decided incorrectly in our prior decision or ignored altogether. Emprise has asked that we address each of these issues and that we restore the evaluation points that it says the Army should have assigned to the firm's proposal.

As we said in our prior decision, it is not the function of this Office to reevaluate technical proposals. Syscon Corp., B-208882, Mar. 31, 1983, 83-1 CPD ¶ 335. Rather, we review the record to determine whether the agency's evaluation was reasonable and complied with applicable statutes and regulations. In reconsidering Emprise's protest, we requested the Army to supplement its initial report with respect to several of Emprise's specific complaints, and later asked for more information. Emprise reviewed the Army's responses and submitted additional comments.

Discussed below are some of the more prominent deficiencies noted in the Army's evaluation of Emprise's proposal as well as some of the specific issues Emprise requested us to address. We do not address here every deficiency contained in the proposal, or every allegation made by Emprise concerning the conduct of this procurement, because we are convinced from our review of the record as a whole that the Army did not improperly exclude the Emprise proposal from the competitive range. Basically, in addition to taking exception to a number of solicitation requirements, Emprise's proposal offered to supply a test stand much different in essential design from what the Army had envisioned. Although the Army could have discussed the perceived deficiencies with Emprise, it appears that Emprise's proposal would have required substantial rewriting in order for it to comply with the Army's expectations. We have said that an agency need not conduct discussions with an offeror whose proposal would require major revision. See, e.g., Conwal Inc., B-210443, Aug. 8, 1983, 83-2 CPD ¶ 176. This is particularly so where, as here, other offerors whose proposals received significantly higher evaluation scores remain in the competitive range.

#### Factory testing

Emprise said in connection with the initial protest that the "pivotal" issue in this case involves the solicitation's requirement for factory testing. Briefly stated, while the solicitation required the contractor to conduct a test of the completed system at the contractor's facility, Emprise proposed such a test only after it had installed the system at the Anniston Army Depot. Emprise contends that this

allowed the firm to lower its proposed costs and argues that its proposal should have received additional evaluation points because of the firm's close proximity to Anniston. Emprise concedes that the Army had a right to incorporate in the solicitation a requirement for factory testing, but contends that the Army's refusal to waive the requirement in its case was unreasonable. In this connection, Emprise alleges that the Army waived the factory test requirement in evaluating another offeror's proposal.

We find no merit to the protester's position. Emprise stated in its proposal that the firm did not propose factory testing for two reasons: (1) the firm has no factory, and (2) the firm had been unable to resolve the liability and security issues involved in handling a government-furnished test engine. While Emprise may be convinced that its approach to testing would be more advantageous than that specified in the solicitation, the facts remain that the solicitation required a factory test and that Emprise did not offer in its proposal to comply with this requirement. We do not think it was unreasonable for the agency to view the Emprise proposal as deficient in this regard.

There also is no merit to the protester's contention that the agency waived the factory test requirement for one of the other offerors, Avco. We reviewed the relevant portion of the Avco proposal and found that it described two alternatives for meeting the testing requirement, both involving tests at an Avco facility.

#### Dynamometer

The central component of the testing system being procured is a dynamometer, a device that absorbs and measures power produced by other devices. The solicitation contemplated a conventional waterbrake dynamometer in which water heated during the testing is cooled through a circulation process.<sup>1/</sup> The protester proposed a waterbrake dynamometer that would allow the water to convert to steam which then would condense in a heat exchanger. Emprise contends that

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<sup>1/</sup> Although the solicitation specified only an absorption-type waterbrake dynamometer, which Emprise contends accurately describes the steam dynamometer it proposed, solicitation paragraph 1.1.10 lists a cooling tower as one of the requirements of the dynamometer water system. A cooling tower is a feature of a conventional dynamometer, and not of the dynamometer proposed by Emprise.

its dynamometer would meet every solicitation requirement and that therefore the Army's rejection of its proposal was unreasonable.

We concluded in our prior decision that the Army's evaluation was reasonable given the lack of sufficient assurance in the Emprise proposal that the system Emprise proposed would be suitable for the required application, testing of the AGT-1500 engine. Upon further review of the record, we remain convinced that the agency's evaluation was reasonable.

One of the principal concerns of the evaluators was that the use of a steam dynamometer would require changes in testing procedures. The evaluators were concerned that a substantial effort on the part of the government would be required to ensure that test data would not be affected by the use of equipment different than that originally contemplated. In support of this concern, the Army notes that the proposal submitted by Avco, which manufactures the AGT-1500 engine, specifically mentioned ongoing development of a steam dynamometer, but noted that reliability remained an unanswered question and that development of testing hardware and software involved increased technical risk.

Emprise's response to the concerns of the evaluators is that while Avco may have anticipated difficulties in using a steam dynamometer, this should not have caused Emprise's proposal to be downgraded. Emprise argues that the reservations expressed in Avco's proposal were based on Avco's need to modify its existing system to incorporate a steam dynamometer while Emprise planned no such modifications. In addition, Emprise says that the statements in Avco's proposal did not pertain to testing engines in the class of the AGT-1500.

Based on our review of the relevant portion of the Avco proposal, we think the proposal supports the concerns of the evaluators regarding the system Emprise proposed. More important than what Avco may have said in its proposal about steam dynamometers, however, is what was contained in Emprise's proposal. In this respect, while Emprise continues to allege that no changes in testing procedures would be required, the firm has not shown where in its proposal such assurances are contained.

The agency points out that the dynamometer Emprise proposed was radically different than the conventional dynamometer contemplated by the solicitation and offered by the other offerors. Emprise does not take issue with this assessment. Although the solicitation permitted offers based on alternate methods, we think the concern of the evaluators

that the alternate technology proposed by Emprise would require extensive adjustments to testing procedures was reasonable.

#### Site work

The solicitation required the contractor to install the system and be responsible for stable operation. The Army's position is that although the RFP did not specifically require the contractor to perform site work, any site work needed to install and stabilize the system would be the responsibility of the contractor. In our prior decision, we said that this was the only reasonable reading of the solicitation. Emprise stated in its proposal, however, that all site work, including a concrete slab, equipment foundations, anchors, and grounding loops would be the responsibility of the government. In addition, the solicitation required the contractor to provide a remote, bunded<sup>2/</sup> fuel tank, yet Emprise's proposal indicated that bunding also would be the government's responsibility.

Emprise now contends that it was merely attempting "to clarify the division of work along lines that seemed reasonable." Emprise complains that it would not have been possible to bid a price for site work because the Army did not specify a site.

Emprise correctly notes that the solicitation did not indicate a specific site for installation of the test stand. The agency did indicate the specific site, however, in a pre-closing date site visit attended by an Emprise representative. We recognize that the solicitation was not as clear as perhaps it should have been regarding the responsibility for necessary site work. Nevertheless, in light of the solicitation provisions making the contractor responsible for the installation and stable operation of the system, we continue to think the more reasonable conclusion to be drawn is that all necessary site work would be the contractor's responsibility. There can be no issue that the solicitation required a bunded fuel tank. Emprise, however, proposed having all site work, including bunding, be the responsibility of the government. In our view, the evaluators reasonably downgraded the proposal for this exception.

#### Procedural deficiencies

Emprise complains that it did not receive prompt notice of the agency's rejection of its proposal and that it was

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<sup>2/</sup> A bunded fuel tank is one surrounded by an embankment.

required to undergo an audit by the Defense Contract Audit Agency (DCAA) even after a determination had been made to reject the proposal on technical grounds. As the agency now explains, it requested DCAA audits on all offerors at the time the proposals were received. It postponed notifying Emprise and another firm that their proposals were not in the competitive range pending receipt of the results of the audits. The agency subsequently learned, however, that DCAA had not processed the audit requests and therefore renewed the requests at that time.

In our view, the Army should not have renewed its request for a DCAA audit of Emprise since at the time the request was renewed a determination had already been made to reject the proposal as technically unacceptable. We find no indication in the record, however, to support Emprise's speculation that the Army was simply looking for a reason to reject the Emprise proposal. Moreover, while we recognize that Emprise may have been inconvenienced by the unnecessary audit, there is no basis to conclude that the protester's competitive position with respect to this procurement was affected.

Finally, Emprise contends that it was prejudiced by the agency's delay in notifying the firm that its proposal had been rejected because it would have been able to protest earlier and then would have had an opportunity to submit a timely best and final offer. There is no merit to this position since, regardless of the timing of the protest, we have determined that the Army had a reasonable basis for determining Emprise's proposal to be technically unacceptable. Thus, Emprise would not have been invited to submit a best and final offer in any event.

Our prior decision is affirmed.

*Harry R. Van Cleve*  
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General Counsel